

HOUSE BILL 989
By Turner M

AN ACT to amend Tennessee Code Annotated, Section 4-29-228 and Title 4, Chapter 36, relative to the Tennessee state racing commission.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 36, is amended by inserting the following language as a new Part 2.

§ 4-36-201.

(a) For purposes of implementing and administering the provisions of the Racing Control Act of 1987, title 4, chapter 36, there is hereby created and revived the Tennessee state racing commission, hereafter referred to as the "commission". The commission shall consist of seven (7) members, to be appointed by the governor with the consent of the general assembly as expressed by joint resolution. If any such appointment occurs while the general assembly is not in session, then the appointee shall serve only until the close the next annual session unless the general assembly approves the joint resolution required by this subsection.

(b) In making appointments to the commission, the governor shall strive to ensure that at least one person appointed to serve on the commission is sixty (60) years of age or older and that at least one person is a member of a racial minority.

(c)

(1) One member shall possess a background in law enforcement and shall be appointed by the governor from a list of three (3) persons recommended by the director of the Tennessee bureau of investigation.

(2) If the governor determines that the persons recommended are not proper and suitable for membership on the commission, then the governor may decline to appoint any of such persons and shall call upon the director to submit another list of three additional (3) persons, and the governor may repeat such call until the director shall recommend some qualified person meeting the governor's approval.

(d)

(1) One member shall possess a background in accounting and shall be appointed by the governor from a list of three (3) persons recommended by the state board of accountancy.

(2) If the governor determines that the persons recommended are not proper and suitable for membership on the commission, then the governor may decline to appoint any of such persons and shall call upon the board to submit another list of three additional (3) persons, and the governor may repeat such call until the board shall recommend some qualified person meeting the governor's approval.

(e) At the time of their initial appointments, at least four (4) members shall possess reasonable knowledge of the practices and procedures of racing.

(f) No more than three (3) members shall be residents of the same grand division of the state.

(g) The members of the commission shall serve staggered terms, to be accomplished by the following manner of initial appointments:

(1) Two (2) members shall each serve a two-year term;

(2) Two (2) members shall each serve a three-year term; and

(3) Three (3) members shall each serve a four-year term.

All subsequent appointments for regular terms shall be four-year terms. A member shall be eligible to serve more than one (1) term.

(h) If a vacancy occurs on the commission for any reason, then the governor shall make appointment for the remainder of the unexpired term as the governor would make an original appointment.

§ 4-36-202. To be eligible for appointment to and membership on the commission, a person shall:

(1) Have been a legal resident of this state for at least five (5) years immediately preceding the appointment, and shall be more than thirty (30) years of age;

(2) Be of such character and reputation as to promote public confidence in the administration of racing within the state;

(3) Not directly or indirectly or in any capacity own or have any interest in any racetrack where a race meeting may be held, including, but not limited to, an interest as owner, lessor, lessee, operator, manager, concessionaire, stockholder or employee;

(4) Not be a public official or public employee;

(5) Never have been convicted of any gambling or gaming offense under the federal law or the laws of this state or any other state or of an offense which is punishable as a felony under federal law or the laws of this state or any other state;

(6) Not wager or cause a wager to be placed upon the outcome of any race at a race meeting which is under the jurisdiction and supervision of the commission;

(7) Not accept any pecuniary or other form of reward or gift from any association or any licensee of the commission; and

(8) Have no pecuniary interest or engage in any private employment in a business that does business with any association.

§ 4-36-203.

(a) A member of the commission shall receive no compensation for the member's services, but a member shall receive the amount specified by § 3-1-106(b)(1), for expenses for each day or portion of a day the member is engaged in the official business of the commission.

(b) A member shall also receive reimbursement for travel expenses in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

§ 4-36-204. The members of the commission shall annually elect one (1) member to serve as chairperson of the commission.

§ 4-36-205. A majority of the members of the commission shall constitute a quorum for the transaction of business or the exercise of its powers.

§ 4-36-206.

(a) The governor may remove any member of the commission for cause, upon first giving the member a copy of the charges against such member and an opportunity for public hearing thereon.

(b) If such member is removed, then the governor shall file in the office of the secretary of state a complete statement of all charges made against the member and the governor's findings thereon, together with a complete report of the proceedings.

§ 4-36-207.

(a) The commission shall appoint an executive secretary who shall serve at the pleasure of the commission. The executive secretary shall devote full time to the duties of the office and shall not hold any other office or employment.

(b) To be eligible for appointment as executive secretary, a person shall meet the qualifications required of a member of the commission under the terms of this part,

except the qualifications concerning residency, and the executive secretary shall be subject to the same restrictions applying to members of the commission.

(c) The executive secretary shall receive an annual salary to be determined by the commission within such salary scales as established by state regulation, and shall be allowed actual and necessary expenses incurred in the performance of official duties.

(d) The executive secretary shall:

(1) Attend all meetings of the commission;

(2) Keep a complete record of the proceedings at each meeting of the commission;

(3) Preserve at the general office of the commission all books, documents and papers entrusted to the care of the commission, and prepare for service such books, documents and papers as may be required by the commission; and

(4) Serve as executive officer to the commission and be responsible for the carrying out of all rules, regulations, conditions, orders and directives of the commission.

§ 4-36-208.

(a) The commission may employ, at reasonable compensation, assistant secretaries, stewards, supervisors of mutuels, veterinarians, inspectors, accountants, security personnel and other employees deemed by the commission to be essential to or in connection with any race meeting, and to the best interests of the racing commission, for the purpose of maintaining integrity and honesty in racing.

(b) The commission shall prescribe by rule the powers and duties of the persons employed under this section.

(c) In addition, the commission may appoint such deputies, officers and counsel, as the commission may deem necessary and desirable.

§ 4-36-209.

(a) All meetings of the commission shall be open and public in accordance with title 8, chapter 44. A public record of every vote and action taken by the commission shall be maintained at the commission's office.

(b) All records of the commission shall be open to inspection by the public during regular office hours, except the following:

(1) All records and information pertaining to the testing of humans for the presence of alcohol or drugs, including, but not limited to, medical information, the results of any urine or breathalyzer test, and any reports filed as a result of attending a supervisory treatment program, except for their use with respect to a hearing before the stewards, judges, commission or commission designee;

(2) Investigative records of the commission's security division; and

(3) Criminal history information, also known as "rap sheets", obtained by the commission from the federal bureau of investigation, Tennessee bureau of investigation, or any other law enforcement agency.

(c) The commission shall have access on a confidential basis to the information enumerated in subsection (b) as required to fulfill its lawful function.

§ 4-36-210.

(a) The commission shall keep detailed records of all its meetings, business, collections and disbursements.

(b) The commission shall prepare annually a report of all such meetings, business, actions taken, collections, disbursements and recommendations it deems necessary and desirable following the termination of the racing season in this state. Such report shall be published in accordance with the rules, regulations, policies and procedures of the state publications committee.

(c) The commission shall also offer practical suggestions and recommendations as it deems proper and desirable to accomplish more fully the intent and policy of this chapter.

§ 4-36-211. All funds collected or otherwise received by the commission shall be subject to audit by the comptroller of the treasury under the authority granted by § 8-4-109.

§ 4-36-212. Except as provided in § 4-36-306, all moneys received by the commission pursuant to this chapter shall be paid into the state-general fund.

§ 4-36-213. Except as provided herein, the commission's rule-making procedure and practice shall be governed by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

§ 4-36-214. The commission, as an agency of the state, shall prepare its annual budget in accordance with title 9, chapter 6.

§ 4-36-215.

(a) The commission may:

(1) Issue subpoenas and summon witnesses before its meetings and hearings, administer oaths to such witnesses and require testimony on any issue before it;

(2) Compel the production of all books, records or documents showing the receipts and disbursements of any person licensed to conduct the race meetings under this chapter, as well as other such records which the commission believes to be pertinent to its function of maintaining the integrity of racing in this state;

(3) At any time compel the removal of any employee or official employed by any association in any case where it has reason to believe that the employee or official has been guilty of any dishonest practice in connection with racing, has

failed to comply with any condition of the association's license or has violated any rule adopted by the commission;

(4) Require that the books, records and financial statement of any association under this chapter be kept in a manner prescribed by the commission;

(5) Visit, investigate and place auditors, inspectors and security personnel in the offices, tracks or places of business of any association; and

(6) Impose a civil penalty for each violation of a statute or rule of not more than ten thousand dollars (\$10,000).

(b) If a person refuses to attend to give testimony or to produce books, records or documents, pursuant to a subpoena issued by the commission, then the chancery court of the county where attendance is required, upon application of the commission, shall compel obedience to the subpoena and shall punish refusal to obey or to testify in the same manner as is punished a refusal to obey a subpoena or to testify pursuant to a subpoena issued from the chancery court.

§ 4-36-216.

(a) Any party who is the subject of any order or ruling of the stewards or judges may appeal to the commission with respect to such stewards' and judges' order or ruling other than as to the extent of disqualification for a foul in a race or as to a finding of fact concerning an incident occurring during the running of a race.

(b)

(1) Disciplinary hearings conducted by the stewards or judges and appeals therefrom shall comply with rules of procedure promulgated by the commission and shall not be subject to the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) An appeal in the case of any person penalized or disciplined by the stewards or judges may be made to the commission. An appeal shall be:

(A) Filed in writing at the office of the commission within five (5) days of the date of such penalty or discipline; and

(B) Signed by the person making it and must set forth the person's reasons therefore.

(c) An appeal from the decision of the stewards or judges to the commission shall not affect that decision until the appeal has been sustained or dismissed or a stay order issued.

(d)

(1) An appeal hearing may be conducted by the commission, or may be conducted by a hearing officer appointed by the commission to serve in its place. The hearing officer may be the commission's executive secretary or other staff member, an administrative judge from the administrative procedures division of the department of state, or any other qualified person. A hearing officer may be a state employee, serve by contract or be paid on a per diem basis at the discretion of the commission.

(2) The commission or its hearing officer, upon receipt of a written appeal, shall promptly grant a hearing and render a decision within a meaningful time. Any continuance of a hearing must be reasonable in duration and for just cause.

(3) The hearing officer may, in receiving evidence on behalf of the commission, make such rulings affecting the competency, relevancy and materiality of evidence to be presented and rule upon any motions presented. The commission may require the entire record to be certified to it for decision, and the hearing officer shall submit written findings of fact, conclusions of law

and recommendations that shall be incorporated in and become a part of the record. In the absence of a requirement by the commission that a record be certified to it for decision, the hearing officer shall render an initial decision, and in the absence of either an appeal to the commission or a review upon motion of the commission, the hearing officer's initial decision shall become the decision of the commission.

(4) The commission is duly authorized to promulgate rules setting forth further procedures for appeals filed pursuant to this section.

SECTION 2. Tennessee Code Annotated, Section 4-29-228(a), is amended by adding a new item thereto, as follows:

() Tennessee state racing commission, created and revived by section 1 of this act;

SECTION 3. This act shall take effect July 1, 2005, the public welfare requiring it.